

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JACQUELINE KRETZMON,

Plaintiff,

v.

Civil No.: 11-CV-0704-A

ERIE COUNTY SHERIFF'S OFFICE,

,

Defendant.

NOTICE OF MOTION

NATURE OF ACTION:	Title VII, 42 U.S.C. § 1983, Pendant State Law Claims.
MOVING PARTY:	Defendant Erie County Sheriff's Office
DIRECTED TO:	Plaintiff.
DATE AND TIME:	To be determined by the Court.
PLACE:	United States District Court for the Western District of New York, 68 Court Street, Buffalo, New York 14202.
SUPPORTING PAPERS:	Declaration of David J. Sleight and Memorandum of Law
ANSWERING PAPERS:	To be filed in accordance with this Court's briefing schedule.
REPLY PAPERS:	To be filed in accordance with this Court's briefing schedule.
RELIEF REQUESTED:	An Order granting Defendant's Motion to Dismiss under Rule 12(b) and awarding them costs and any other relief this Court deems just and proper.

ORAL ARGUMENT:

If deemed necessary by the Court.

Dated: September 19, 2011

**JEREMY A. COLBY, Erie County
Attorney and Attorney for
Defendant Erie County Sheriff's
Office, DAVID J. SLEIGHT, of
counsel**

/s/ David J. Sleight
Erie County Department of Law
95 Franklin Street, Room 1634
Buffalo, New York 14202
(716) 858-2200

TO: Lindy A. Korn, Esq.
Attorney for Plaintiff
535 Washington Street, 9th Floor
Buffalo, New York 14203
(716) 856-5676

Charles L. Miller, II, Esq.
Attorney for Plaintiff
535 Washington Street, 9th Floor
Buffalo, New York 14203
(716) 856-5676

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JACQUELINE KRETZMON,

Plaintiff,

v.

Civil No.: 11-CV-0704-A

ERIE COUNTY SHERIFF'S OFFICE,

Defendant.

**DECLARATION OF DAVID J. SLEIGHT IN SUPPORT
OF DEFENDANT'S MOTION TO DISMISS**

I am an attorney admitted to practice before the Courts of the State of New York and make the following Declaration under the penalties of perjury:

1. I am an attorney at law admitted to practice before this Court and am an Assistant County Attorney to Jeremy A. Colby, Erie County Attorney, attorney for Defendant Erie County Sheriff's Office.

2. I make this Declaration in support of the Defendant's Motion to Dismiss pursuant to Rule 12(b).

3. Plaintiff asserts claims against Defendant for alleged violations of Title VII, 42 U.S.C. § 1983, and for pendant State Law claims. As relief, she seeks, *inter alia*, both compensatory and punitive damages

4. Defendant seeks dismissal of Plaintiff's Complaint, or portions thereof, on the separate and independent grounds that:

- a. The Sheriff's Office is not an entity subject to suit;
- b. Punitive damages are not recoverable against a municipality;
- c. Portions of Plaintiff's claim pursuant to N.Y. Labor Law § 740 are barred by the applicable statute of limitations;
- d. Plaintiff failed to comply with N.Y. Gen. Municipal Law § 50-e; and,
- e. Plaintiff's retaliation claims pursuant to Title VII and § 1983 are barred by the election of remedy provisions of N.Y. Labor Law § 740.

5. For the reasons set forth here and in Defendant's Memorandum of Law, Defendant respectfully requests that this Court dismiss this action in its entirety.

DATED: Buffalo, New York
September 19, 2011

JEREMY A. COLBY, Erie County
Attorney, DAVID J. SLEIGHT, of
counsel, Attorney for Defendant Erie
County Sheriff's Office

/s/ David J. Sleight
Erie County Department of Law
95 Franklin Street, Room 1634
Buffalo, New York 14202
Telephone: (716) 858-2202
[Email: David.Sleight@erie.gov](mailto:David.Sleight@erie.gov)

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2011, I electronically filed the foregoing with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case:

Lindy A. Korn, Esq.
Attorney for Plaintiff
535 Washington Street, 9th Floor
Buffalo, New York 14203
lk75atty@aol.com

Charles L. Miller, II, Esq.
Attorney for Plaintiff
535 Washington Street, 9th Floor
Buffalo, New York 14203
clmiller2atty@aol.com

/s/ David J. Sleight
David J. Sleight
Assistant Erie County Attorney
95 Franklin Street, Room 1634
Buffalo, New York 14202
(716) 858-2200